1951

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File No. O Police/51

Legal Department—
A BRANCH

Subject:— Opinions under the Bombay Police Act, 1951

P-21
(E)

File No. O Police/51

Gen. 194

654-A

C O N T E N T S

Legal Department File No. O. Police 1951

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Rjr/30/6
5 C.

The orders made under the relevant sections of the City of Bombay Police Act, 1902 and the Bombay District Police Act, 1890, can be divided into three categories, namely:-

(1) The orders in which a period within which a person shall not enter the area might have been specified and such period does not exceed two years;

(2) The orders may be of indefinite period but two years from the making of orders will expire on the date on which the new Police Bill will come into force.

(3) The orders may be of indefinite period any two years from the making of orders will not expire on the date on which the new Police Bill will come into force.

Subject to what is stated below the orders falling under category (1) will continue to be valid even under the new Act under section 167.

The orders falling under category (1) may also have been passed under sub-section (6) of section 46 of the Bombay District Police Act, 1890, or under section 27(2) of the City of Bombay Police Act. Sub-section (6) of section 46 corresponds to section 57 of the new Police Act. Under that section a person is not liable to be externed merely on the ground that he has been twice or thrice convicted of the offences referred to therein. The Commissioner or the Magistrate is given power to extern any person if he has reason to believe that such person is likely to again engage himself in the commission of an offence similar to that for which he was convicted. Moreover, under section 59 of the new Act before an order is passed for the externment of a person under section 57 he is given the right of hearing. No such right of hearing is given to the person against whom an order has been passed under sub-section (6) of section 46 of the District Police Act (see section 46A of the Act.). The order passed under Sub-section(6) of section 46, even though it may have specified a period not exceeding two years, will be

considered inconsistent with the provisions of section 57 and 59 of the new Act and therefore cannot continue to be valid under section 167. Furthermore, in view of the decision of the High Court in the case or Emperor vs. Jashingabhai Dhobi, 52 Bom. L.R. 544 an order of externment passed before hearing a person against whom such order is passed will not be a valid order. As observed by Bavdekar J. in that case, "the right of hearing before condemnation is admittedly a compenent of the rights which taken together constitute rights of natural justice and in case legislation which restricts the fundamental rights has got to be pronounced to be reasonable, it must give the person, whose freedom is restricted, an opportunit to be heard." The correctness of this decision has not been impugned by the Surpreme Court in appeal. It would, therefore, be desirable to cancel such orders and, if necessary, pass fresh orders under the new Act. As regards orders passed under section 29(2)of the City of Bombay Police Act 1902, they will be inconsistent only with the provisions of section 57 of the now Act. These orders may also be dancelled and fresh orders passed, if necessary.

2. The orders falling under category (2) above may be formally cancelled as being inconsistent with the provision of the new Act.

3. As regards the orders falling under category (3) abov they willbe inconsistent with the provisions of section 52 of the new Act. Moreover, they will be considered as imposing unreasonable restrictions on the freedom of the subject and will, therefore, be considered void or in.- coperative under the Constitution. It will be necessary to cancel such orders, and if necessary, issue fresh orders in consonance with the provisions of the new Act.

4. The power which is possessed by the Commissioner of Police and the Magistrate under the aforesaid two Police Acts to remove a person not born in the area on the ground that he has committed certain offence is not reproduced in

the new Police Bill. In such cases the existing orders may be cancelled and fresh orders may be issued provided the circumstances specified by the Secretary, H.D. in his note at page 10 exist.

5. Para. 16 of H.D. note- The proposal of the H.D. to specially empower the District Superintendent of Police and sub-Divisional Magistrates under certain sections of the new Act by designation and not by name is free from legal objection. It is, however, necessary to refer to each section with reference to which they will be so specially empowered.

6. Para. 17 of H.D. note- The view taken by H.D. is correct.

Sd/- J.R.Dhurandhar

O.C. 13/6

Remembrancer of Legal Affairs.

U.R. to H.D. No. 9334, dated the 13th June 1951.

Mjr/29/6

4 Cs.

Office of the R.L.A.

The view expressed by the Deputy Secretary, Home Department, in his note dated 26-7.1951 does not appear to be correct. Under taluse (i) of the Proviso to sub-section (1) of section 167 of the Bombay Police Act, 1951, rules prescribed and orders made under the repealed Bombay District Police,,Act, 1890, in so far as they are consistent with the former Act are deemed to have been prescribed or made under the new Act. Though to make new rules or to amend the old rules would now require the previous sanction of the State Government and also previous publication in the Bombay Government Gazette would be necessary, it cannct on that account alone be said that the rules framed by the District Magistrate under the Bombay District Police Act, 1890, are inconsistent with the provisions of the Bombay Police Act, 1951. The rules under the District Police Act, 1890, were validly made in accordance with the provisions of that Act and are saved under section 167 of the new Act.

Sd/- J.R.Dhurandhar

O.C. 1/8

Remembrancer of Legal Affairs.

U.R. to H.D. No. 12320 dated the 1st August 1951

F/ Mjr/19/6

4 Cs.

Legal Department

Section 13 of the Bombay Police Act, 1951 (Bombay Act No. XXII of 1951), provides that subject to the conditions and limitations as may be imposed by the State Government, the powers under sections 94, 96, 97, 98, 105, 523, 524 and 526 of the Code of Criminal Procedure, 1898, may be exercised,-

(1) in Districts by the Inspector General of Police as a First Class Magistrate;

(2) in Greater Bombay, by the Commissioner for Greater Bombay as a Presidency Magistrate; and

(3) in areas under their respective charges, by other Commissioners as First Class Magistrates.

R.L.A. is requested to advise whether it is necessary to appoint the Inspector General of Police and the Commissioner of Police as First-Class Magistrate and Presidency Magistrate respectively, to enable them to exercise the powers under the various sections of the Code of Criminal Procedure specified in section 13 of the Bombay Police Act.

By virtue of the provisions of section 13 itself the police officers concerned are vested with the powers. It is not necessary to appoint them either as First-Class Magistrate or Presidency Magistrate to enable them to exercise the powers.

Sd/- J.R.Dhurandhar

O.C.

Additional Secretary to Government.

U.R. to H.D. No. 13618, dated the 24th August, 1951.

Mjr/29/6

4 Cs.

Legal Department.

Attention is invited to the R.L.A.'s opinion No. 9922, dated the 22nd June 1951. It has been opined that "the words' may prescribe' do not leave it to the discretion of the Magistrate to prescribe or not to prescribe a place but only leave it to his discretion to prescribe whatever place he thinks fit. The same considerations apply to the requirements of route and time." The words "may prescribe" appearing in section 56 of the Police Act containing similar provisions regarding externment should be construed in the light of the above opinion and when so construed it becomes obligatory on the part of the officer issuing the order of externment to prescribe the route and time. The officer has only the discretion to prescribe such route and time as he thinks fit.

Sd/- J.R.Dhurandhar

O.C.

Additional Secretary to Government

U.R. to H.D. No. 14856 , dat dated the 18th September 1951.

Mjr/29/6

4 Cs.

Office of the R.L.A.

The question raised for the consideration of the R.L. A. is whether the powers of the District Magistrate under section 55, 56 and 57 of the Bombay Police Act, 1951, can also be exercised by the Additional District Magistrate.

2. Section 55 of the Bombay Police Act, 1951, empowers inter alia the District Magistrate to disperse gangs and bodies of persons caluclated to cause danger or alrm. Section 56 empowers him to remove persons engaged in, or about to be engaged in, the commission of an offence. Similarly section 57 empowers a District Magistrate to remove a person convicted of any of the offences referred to therein outside the district. These sections by themselves do not empower the Additional District Magistrate, nor is there a provision in the Act defining District Magistrate as including an Additional District Magistrate. The Additional District Magistrate is, however, appointed under sub-section (2) of section 10 of the Criminal Procedure Code, 1898; and that sub-section provides that he shall have all or any of the powers of a District Magisteate under the Criminal Procedure Code, or under any other law for the time being in force as the State Government may direct. The Home Department States that whenever the appointment of an Additional District Magistrate is notified, he is also empowered to exercise all the powers of a District Magistrate under all the laws for the time being in force. In that case there would be no difficulty in the way of the Additional District Magistrate exercising the powers of the District Magistrate under sections 55.56 and 57 of the Bombay Police Act, 1951.

Sd/- J.R.Dhurandhar

O.C. 13/10

Remembrancer of Legal Affairs.

U.R. to H.D. No. 15722, dated the 4th October 1951.

R. I. No. 630 Confl. dt. 8-10-51

In his opinion No. 14306, dated 7-9-51 the R.L.A. had expressed the view that under section 61(1)(h) of the Bombay District Police Act, 1890, it was quite competant for the Addl. District Magistrate, Poona, to issue a notification prescribing the height of Tazias. The Addll. D.M. Poona had issued his order on 25th March 1951 and by a press note issued on 28th September 1951 has invited the attention of the public to that order. The H.D. has presumed that the order in question is saved under section 167 of the Bombay Police Act, 1951, and will be deemed to have been issue under section 104 of that Act. The papers are shown to the R.L.A. with reference to his previous opinion.

The view expressed in the concluding portion of the H.D. note correct.

Sd/-

R.L.A.

Sd/- R.T.Katarki
8/10

Sd/- J.R.Dhurandhar
8/10

U.R. to H.D. No. 855-Confl, dated 8-10-1051

ir/30/6

Cs.

Legal Department.

The question raised for the consideration of the R.L.A. is under what Act offences committed under the Bombay District Police Act, 1890, before the coming into operation of the Bombay Police Act, 1951, can be punished now.

2. Under sub-section (i) of section 167 of the Bombay Police Act, 1951, the Bombay District Police Act, 1890 has been repealed. Clause (e) of sub-section (2) however provides that nothing in sub-sectio (i) shall be deemed to affect any legal proceeding pending in any Court or before any officer on the date of the coming into force of the Bombay Police Act, or anything done or suffered to be done in the course of such proceedings; and any such proceeding or any appeal or revisional proceednge arising out of such proceedings shall be instituted, contained or disposed of, as the case may be, as if this Act had not come into force. It would be seend from this provision that though the Bombay District Police Act, 1890, has been repealed pending proceedings will have to be disposed of under that Act. The view expressed in the H.D. note dated 5-10-1951 is correct.

Sd/- J.R.Dhurandhar

O.C.

Additional Secretary to Government.

U.R. to H.D. No. 16216 dated the 13th October 1951.

Mjr/29/6

4 Cs.

Office of the R.L.A.

Moving about in a state of nudity has been held by the High Court to amount to an offence under section 61(c) of the Bombay District Police Act, 1890, corresponding to section 11(of the Bombay Police Act, 1951(see Emperor v. Maula Baba Faki 19 B.L.R. 907). This offence under the new Act is treated as serious as it is not included within the scope of section 151. Under the old Act however this offence was not treated as seri serious and was included within the scope of section 73, and as such the Police Officers had discretion not to prosecute if it had not caused serious mischief and had been desisted f from on warning being given. Also under Article 25 of the Constitution right freely to profess or practise religion has been guaranteed by only subject to public order, morality and health. In the circumstances general direction to the District Magistratesand District Superintendents of Police not to put restrictions on the movement in the public of nude Jain Sadhus would virtually amount to a discrimination in favour of Jain Sadhus from the penal provision of law. It would therefore not be legal to issue such directions. Also issue of such general directions would be administratively inadvisable as it will unduly fetter the hands of the local authorities and prevent their taking action under section 144 of the Criminal Procedure Code even in serious cases where breach of the peace is apprehended.

Sd/- J.R.Dhurandhar

O.C. 7/8

Remembrancer of Legal Affairs.

U.R. to H.D., No. 784-Confl, dated 8th August 1951..

Mjr/29/6
4 Cs.

Office of the R.L.A.

Section 123 of the Bombay Police Act, 1951, is not a new provision. It re-enacts the provisions of section 113 of the City of Bombay Police Act, 1902 , and section 61DD of the Bombay District Police Act. Section 113 was in the City of Bombay Police Act, since 1902, which section 61DB was inserted in the Bombay District Police Act by Bombay Act LIX of 1947. Section 123 of the Bombay Police Act, 1951, empowers a Police Officer to disarm any person who goes armed in a street or a public place with a dangerous weapon or an explosive, unauthorisedly, i.e. without being permitted to do so by a lawful authority. The provision is within the competence of the State Legislature as falling under item No. 1 "public Order" and No. 2 "Police" of List II in the Seventh Schedule to the Constitution. It would not be proper to hold that the subject.matter of the provision falls exclusively within the item "Arms and explosives" No. 5 in List I in the said Schedule and is therefore outside the scope of the State Legislature. There is nothing in that provisions which is in conflict with section 13 of the Indian Arms Act or the Indian Explosives Act. The exercise of an identical power by both the Centre as well as the States need not necessarily result in clash A.G. for Ontario v A.G. for Canada (1912) A.C. 371). Although the subject-matter of the provision in its aspect relating to arms and explovies may fall within the Central field, in its aspect relating to public order and police, it may fall within the State Field. This is clear from the context and from the preceeding and succeeding provisions in the Chapter in which the said provision occurs. The lawful authority which is referred to in section 123 of the Bombay Police Act, 1951, is however the authority under the Indian Arms Act, 1878, or the Indian Explosives Act, as the case may be, The words Bother offensive weapon" in the sectionwill have to be construed by the rule of ejusdem generis,and although it is for a Police Officer to determine what an offensive weapon is, his discretion will have to be guided by that rule and

cannot be absolute.

Sd/- J.R.Dhurandhar

O.C.

Remembrancer of Legal Affairs.

U.R. to H.D. No. 15671, dated 3-10-1951

Mjr/29/6

4 Cs.

Legal Department

The District Magistrate is quite competent under section 33(1)(b) of the Bombay Police Act, 1951, to make rules prohibiting the use of cycles in public streets and places without a bell and the breach thereof would be punishable under section 131(a)..Section 100(1) has no application. The view taken by the Home Department is correct.

Sd/- B.D. Mirchandani

o.c.

Additional Secretary to Government

U.R. to H.D., No. 19158, dated 29th November 1951.

Mjr/29/6

4 Cs.

Office of the R.L.A.

In this case the Chief Presidency Magistrate has determined the amount of compensation under section 45 of the City of Bombay Police Act, 1902, which has been repealed. It is true that under section 51 of the Bombay Police Act, 1951, the Chief Presidency Magistrate could have directed the recovery of a riot tax and out of the amount of the tax so recovered, could have paid the compensation under sub-section (8) of the said section. But under section 53 of the said Act, Government can direct the Chief Presidency Magistrate not to take steps for the recovery of a riot tax and it is open to Government to pay the amount of compensation ex gratia out of the money which has lapsed to Government in previous years.

Sd/- J.R.Dhurandhar

a.c. 5/12

Remembrancer of Legal Affairs.

U.R. to H.D. No. 19586, dated the 6th December 1951.

Mjr/29/6

4 Cs.

Office of the R.L.A.

The Public Service Commission suggest that the proper course in this case would be to make rules under the Bombay Police Act, 1951, for the amalgamation of the separate cadres of the Police which at present exist for the Greater Bombay and districts. The commission also state that so long as such amalgamation is not actually effected., transfers from one cadre to another will involve change in cadre and emoluments and the prior consultation with the Public Service Commission is necessary. It does not appear from the letter of the Commission on what provision of law the Commission has based its view. If reliance is sought to be placed on article 320(3)(b) of the Constitution, the view does not appear to be correct. Sub-clause (b) of clause (3) of article 320 refers to transfers from one service to another. In consequence of the provisions of section 3 of the Bombay Police Act, 1951, the Police for the whole of the State has been made one single Police Force. There are no longer two separate forces as there were under the City of Bombay Police Act and the Bombay District Police Act. It is true that under clause (1) of the proviso to section 5 the rules or orders applicable to the Forces constituted under the said Acts are to remain in force until Government determined the conditions of recruitment, etc., by a general or special order . No such orders are yet made. But the omission to make the orders would not make the old forces to be separate forces or services. Both have become the branches of one Police Force. Under rule 3(c) of the Bombay Civil Services Classification and Recruitment Rules read with appendix I, different services under the Bombay Government are specified. The word "services" in article 320(3)(b.) in the Constitution appears to have been used in the same sense. The Greter Bombay and district cadres of the Police cannot be held to be services within the meaning of that article. The view taken by Secretary , H.D., is correct.

Sd/- J.R.Dhurandhar
7/12
Remembrancer of Legal Affairs.

o.c.

U.R. to H.D. thro' P. & S.D. No. 106-Confl dt 7-12-1951

OFFICE OF THE R.L.A.

A hotel licence granted to one Shantilal Popatlal under rules framed under section 39A of the Bombay District Police Act, 1890, was suspended by the District Magistrate in exercise of the powers vested in him under rule 15 and he subsequently on 20th June 1951 restored the licence. The question raised for the R.L.A's consideration is whether Government can cancel the licence in view of his past history as a licensee.

Under the proviso to section 33, sub-section (1) of the Bombay Police Act, 1951 any action taken under the rules or orders made under this sub-section or the grant of a licensee made under subh rules or orders shall be subject to the control and supervision of the State Government. The rules framed under section 39A of the Bombay District Police Act are saved under section 167 of the Bombay Police Act, 1951 . But the Bombay Police Act, 1951 came into force with effect from 1st August 1951 and the Bombay District Police Act, 1890 contained no probision similar to the proviso to section 33 sub-section(1) of the Bombay Police Act, 1951. Consequently, on the date on which the District Magistrate restored the licence to Santilal Popatlal Government had no power to revise the order of the District Magistrate restoring the licence. It would not therefore be competent for Government to revise the order of the District Magistrate and to cancel the licence of Shantialal Popatlal.

Sd/- J.R.Dhurandhar

O.C. 8/12

Remembrancer of Legal Affairs.

U.R. to H.D. No. 19801, dated the 10th December 1951.

Mjr/29/6

4 Cs.

Legal Department

The Deputy Commissioner of Police, Greater Bombay, has passed a detention order on one Shri Noor Mahomed Walli Mahomed under the Preventive Detention Act, 1950, a copy of which is at p 5 ante. The Preventive Detention Act does not empower a Deputy Commissioner to exercise the powers of detention conferred by the Act; but the Deputy Commissioner has issued the present order in view of the order of the Commissioner of Police under section 10(2) of the Bombay Police Act, 1951, whereunder he has empowered the Deputy Commissioner to exercise all the powers, functions and duties of the Commissioner of Police under the Police Act or any other law. The Home Department considers that as the Bombay Police Act, 1951, was reserved for the consideration of the President and as it has received his assent, its provisions will prevail over the Prevention Detention Act, 1950, in view of the Provisions of Article 254(2) of the Constitution; and the Deputy Commissioner will be entitled to exercise the powers of detention. The R.L.A. is requested to advise whether this view is correct.

2. Sub-section (2) of section 10 of the Bombay Police Act, 1951, enacts that every such Deputy or Assistant Commissioner shall under the orders of the Commissioner, exercise and perform any of the powers, functions and dutues of the Commissioner to be exercised or performed by him under the provisions of this Act or any other law for the time being in force, in accordance with the general or special orders of the State Government made in this behalf. This provision no doubt empowers the commissioner of Police to delegate his powers to the Deputy or Assistant Commissioner but these officers are required, in terms of the section, to exercise those powers in accordance with the general or special orders of the State Government made in this behalf. It is stated in the Home Department note at A on p 12. ante that no such orders have been issued by the State Government If so it should not be possible for the Deputy Commissioner or the

Assistant Commissioner to exercise the delegated powers unless and until the State Government issues the necessary orders as contemplated in the section (Vide R.L.A's Opinion No. 6399 dtØ 21st April 1951). Further even if Government issues the necessary orders, it appears that it would not be possible for the Deputy or the Assistant Commissioner to exercise the powers under the preventive Detention Act, 1950. The provisions of Section 10(2) of the Bombay Police Act, 1951 are somewhat identical with those of section 10 of the Bombay Land Revenue Code. In interpreting the term "any other law" occurring in that section the High Court has held that the phrase would be restricted to any other law which is ejusdem generis with the Land Revenue Code and not a special enactment (vide 39 Bom. 552; cf. also R.L.A's Opinion No. 2152/dt 10th March 1941). The Preventive Detention Act, 1950 cannot be said to be a law ejusdem generis with the Police Act. It is a special enactment and as pointed out in A.K. Gopalan Vs. The State (1950 S.C.R. 88 that Act falls under entries 9 and 3 of Lists I and II of the Seventh Schedule. The Police Act, 1951 does not appear to be an enactment with respect to the matters covered by Preventive Detention Act and Article 254(2) does not appear to be attracted. In the circumstances it appears that it would not be competent to the Commissioner of Police to delegate his power under the Preventive Detention Act to his subordinates by invoking the said of section 10(2) of the Bombay Police Act, 1951

o.c. Sd/- B.D. Mirchandani
Additional Secretary to Government.

U.H. to H.D. No. 18222 dated, 16th November 1951.

Mjr/2ØØ6

4 Cs.

Legal Department

Bombay Police Act, 1951. Section 167(2)(d)

Section 167 (2)(d) of the Bombay Police Act, 1951 (Bom XXII of 1951). interalia provides that the repeal of the Bombay District Police Act, 1890 shall not be deemed to affect any investigation, legal proceeding or remedy in respect of such right, privilege, application, liability, penalty, forfeiture or punishment. As the licence was cancelled by the Additional District Magistrate, in this case, before the Bombay Police Act, 1951, came into force the remedy, if any, of the applicant against the cancellation of the licence, would be under the Bombay District Police Act, 1890, and not under the Bombay Police Act, 1951. The proviso to section 33(1) of the latter Act has therefore, no application to the present case.

2. It appears that the licence was granted, in the present case, for running a hotel under rules framed by the District Magistrate under section 39A of the Bombay District Police Act, 1890, Section 79A of the Act provides that any licence granted under the provisions of this Act may at any time be suspended or revoked by the District Magistrate, if any of its conditions or restrictions is infringed or evaded by the person to whom it has been granted, or if such person is convicted of any offence in any matter in which such licence relates. The power to cancel of suspend a licence vested in the District Magistrate and this power was not subject to any appellate or revisional jurisdiction of Government. Consequently, Government cannot interfere with the order passed by the Additional District Magistrate cancelling the licence in the present case.

Sd/- B.D. Mirchandani

o.c.

Additional Secretary to Government.

U.R. to H.D. No. 16782 dated, 22nd Oct, 1951.

Mjr/29/6

4 Cs.